

The Administrative Law Judge later granted claimant's post-award request for a change in authorized physician by the preliminary hearing Order dated January 18, 1996. Additionally, she ordered respondent to pay claimant's attorney \$400.00 in attorney fees. Respondent appeals only the question of whether the Administrative Law Judge exceeded her jurisdiction in ordering attorney fees paid to the claimant's attorney. Respondent's principle argument is that because the preliminary hearing statute, K.S.A. 44-534a, does not contain a provision that allows an award of attorney fees, the Administrative Law Judge does not have jurisdiction to grant a request for attorney fees.

In the case at hand, compensability of the claim is not an issue that has been raised by either the claimant or the respondent on appeal before the Appeals Board. Therefore, during the period of time an award is pending review by the Appeals Board, medical compensation shall be paid in accordance with the award of the Administrative Law Judge and shall not be stayed pending such review. Claimant may request a preliminary hearing to enforce this provision pursuant to K.S.A. 44-534a. See K.S.A. 44-551(b)(2)(C).

A request for attorney fees is authorized by K.S.A. 44-536(g) which provides in part:

"In the event any attorney renders services to an employee . . . subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, or otherwise, such attorney shall be entitled to reasonable attorney fees for such services If such services involve no additional award of compensation, the director shall fix the proper amount of such attorney's fees in accordance with this subsection and such fees shall be paid by the employer"

The Appeals Board finds that K.S.A. 44-536(g) authorizes the Administrative Law Judge to order attorney fees to be paid by the respondent to claimant's attorney in a post-award proceeding. Accordingly, the Administrative Law Judge did not exceed her jurisdiction in ordering attorney fees paid to claimant's attorney. The Appeals Board, therefore, affirms the preliminary hearing Order of the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated January 18, 1996, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven Foulston, Wichita, Kansas
Eric Lanham, Kansas City, KS
Marvin Appling, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director